

CHICAGO AND



TRANSPORTATION COMPANY

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RECORDATION NO. 9638-A Filed & Recorded

SEP 1 1978 - 1 04 PM

INTERSTATE COMMERCE COMMISSION

August 31, 1978

BERNARD J. ALLEN
DIANE KOHLER-RAUSCH
JOAN A. SCHRAMM
ASSISTANT SECRETARIES

Re: File No. A-10723

RECORDATION NO. 9638-B Filed & Recorded

SEP 1 1978 - 1 04 PM

8-244A076

Date SEP 1 1978

Fee \$ 50 + 10

Interstate Commerce Commission

Washington, D. C. 20423

Attention: Acting Secretary

ICC Washington, D. C.

Gentlemen:

Please refer to your Number 9638 in which a Lease Agreement covering a Plasser Model RM 76 U Ballast Undercutter and Cleaner was filed on August 9, 1978 at 11:15 a.m. We would like the enclosed documents to be filed under the 9638 number, with A and B designations.

Enclosed for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following:

(1) Agreement and Indenture (Security Agreement), dated as of September 1, 1978, between Great American Life Insurance Company (Owner) and Great American Insurance Company (Secured Party).

(2) Assignment of Lease, dated as of September 1, 1978, between Great American Life Insurance Company, Owner/Lessor and Great American Insurance Company, Secured Party/Assignee.

The addresses of the parties to the aforementioned agreements are:

Great American Life Insurance Company
6310 San Vincente Boulevard
Los Angeles, California 90058

Great American Insurance Company
c/o Robert C. Lintz
One East Fourth Street
Cincinnati, Ohio 45202

Interstate Commerce Commission
August 31, 1978
Page 2

The equipment covered by the aforementioned documents consists of one Plasser Model RM 7611 Ballast Undercutter and Cleaner.

Enclosed is our check for \$60.00 to cover your recording fee. Please return Counterparts Nos. 1 to 4, inclusive, showing your recordation data.

Very truly yours,

Diane Kohler-Rausch
Diane Kohler-Rausch
Assistant Secretary

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

9/1/78

OFFICE OF THE SECRETARY

Diane Kohler-Rausch
Assistant Secretary
Chicago & North Western Transp. Co.
400 West Madison Street
Chicago, Illinois 60606

Dear

Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **9/1/78** at **1:05pm**,
and assigned recordation number(s) **9638-A & 9638-B**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9638-14 Filed & Recorded

SEP 1 1978 -1 05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND INDENTURE
(Security Agreement)

between

GREAT AMERICAN LIFE INSURANCE COMPANY

(Owner)

and

GREAT AMERICAN INSURANCE COMPANY
(Secured Party)

Dated as of

September 1, 1978

AGREEMENT AND INDENTURE

AGREEMENT AND INDENTURE (Security Agreement) dated as of September 1, 1978, between GREAT AMERICAN LIFE INSURANCE COMPANY, a New Jersey corporation (hereinafter called the "Owner") and GREAT AMERICAN INSURANCE COMPANY, an Ohio corporation, (hereinafter called "Secured Party")

WITNESSETH"

WHEREAS, the Owner is the owner of, or pursuant to the Purchase Order Assignment will upon payment of the Purchase Price thereof, become the owner of the railroad equipment listed in Item 1 of Exhibit A hereto and the Owner has the full power to grant a security interest in all of its right, title and interest in and to such equipment, including a security interest in equipment to be acquired under the Purchase Order Assignment. Such equipment is presently leased by the Owner to the Lessee described in Item 2 of Exhibit A hereto (such Lessee and any subsequent lessee, being hereinafter called the "Lessee"), and

WHEREAS, to provide funds to be used to finance part of the purchase price of such equipment, the Owner has obtained the commitment of Secured Party to make a loan to the Owner in an aggregate principal amount not to exceed Five Hundred Forty-five Thousand Six Hundred and Fifty Dollars (\$545,650.00) to be evidenced by the Owner's 10-1/4% Equipment Promissory Note (nonrecourse), (hereinafter called "Note"), and

WHEREAS, the Owner has herein and in the Loan Agreement provided for the issue and delivery by the Owner of the Note, the granting of a Security Interest to Secured Party in the Equipment and the assignment to Secured Party of the Lease covering the Equipment, and

WHEREAS, all things necessary to make this Agreement and Indenture ("Indenture") a valid and legally binding obligation of the Owner for the uses and purposes herein set forth, in accordance with its terms, have been done and performed.

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note issued and delivered hereunder and outstanding, the payment of all other sums due hereunder and the performance of the covenants therein and herein contained, and

in consideration of the premises and of the covenants herein contained and of the purchase of the Note by Secured Party (and any other or subsequent holders thereof) and the sum of \$1.00 paid to the Owner by Secured Party at or before the delivery hereof, the receipt and sufficiency whereof is hereby acknowledged; the parties hereby agree as follows:

ARTICLE I

Definitions

Section 1.1 Certain Definitions. For purposes of this Indenture, the following terms shall have the respective meanings set forth below or provided for in the section of this Indenture following such term (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

A. "Assignment of Lease" or "Assignment" - The instrument in substantially the form and text attached hereto as Exhibit B executed and delivered by the Owner to Secured Party with respect to all of the Units.

B. "Equipment" - the equipment specifically described in Item 1 to Exhibit A hereto.

C. "Casualty Occurrence" - Section 5.6

D. "Casualty Prepayment Date" - Section 5.7

E. "Consent to Assignment" - The instrument substantially in the form and text attached to the Loan Agreement as Exhibit C thereto executed and delivered to Secured Party by the Lessee.

F. "Default" - Any event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

G. "Due" and "Payable" - When used with reference to the principal of, or interest on, the Note or any portion thereof, shall mean due and payable, whether at the date of maturity specified in the Note or by acceleration, operation of the prepayment provisions of this Indenture, or otherwise.

H. "Equipment" - Subsections (a) (b) and (c) of Section 2.1.

I. "Event of Default" - Article VI.

J. "Impositions" - Section 4.02.

K. "Indenture Estate" - Subsections (a) through (e) of Section 2.1.

L. "Lease" - The Lease more particularly described in Item 2 of Exhibit A hereto covering the Equipment therein indicated, the original of which has been delivered by the Owner to Secured Party, and any amendments thereto, guaranties thereof, security interests granted to secured obligations thereunder and any new leases executed and delivered as permitted hereby or by an supplemental indenture or indentures hereto. All terms defined in the Lease and not defined herein shall have the meanings ascribed to them in the Lease unless the context hereof otherwise requires.

M. "Lien of this Indenture", "Lien Hereof", and "Security Interest" shall mean any lien or security interest created by this Indenture or by the Assignment of Lease or any other instrument executed in favor of Secured Party pursuant to any of the provisions hereof.

N. "Loan Agreement" - shall mean that certain loan agreement between the Owner and Secured Party providing, among other things, for the loan to be evidenced by the Note.

O. "Note" - Any promissory note issued pursuant to the provisions of Section 3.1.

P. "Noteholder" - Any holder of any Note, whether Secured Party or any successor or assign of Secured Party.

Q. "Opinion of Counsel" - An opinion of independent counsel (which may, from time to time, serve as counsel for the Owner or the Lessee) acceptable to Secured Party which opinion is in scope, form and substance satisfactory to Secured Party and Secured Party's counsel.

R. "Payment Date" - Any date on which is due a regular installment under the Note.

S. "Payment Date Number" - With respect to any Payment Date on the Note shall mean the number of regular installments (including the one to be made on such Payment Date) which shall have been due on the Note on or before such Payment Date.

T. "Person" - An individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

U. "Purchase Price" - With respect to the Equipment means the price paid for such Equipment by the Owner as shown on a bill of sale issued pursuant to the Purchase Order.

V. "Responsible Officers" - With respect to the Owner shall mean the Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, the Chairman of the Executive Committee, the President, every Vice President, Treasurer, every Assistant Treasurer, the Secretary, every Assistant Secretary.

W. "Secured Party" - Great American Insurance Company, an Ohio corporation, with its principal office at 580 Walnut Street, Cincinnati, Ohio 45202.

X. "This Indenture", "The Indenture" and "Indenture" - shall mean this instrument as originally executed or as it may from time to time be supplemented or amended and also, wherever the context permits, the Assignment of Lease and any other instrument executed in favor of Secured Party pursuant to any of the provisions hereof.

ARTICLE II

Security Interest

Section 2.1 The Owner of these presents does grant, bargain, sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and grant a security interest to Secured Party, its successors and assigns, all of the Owner's right, title and interest in and to the following described property, rights and privileges, to wit:

(a) The railroad equipment listed in Item 1 of Exhibit A hereto.

(b) All substitutions, replacements, accessories, equipment, parts and appurtenances, additions and modifications of or to all of any part of the property described in Subsection (a) above whether the same are now owned by the Owner or shall hereafter be acquired by the Owner.

(c) All additional railroad equipment, parts and other property which shall be subjected to the lien hereof by supplemental indenture or indentures or by writing of any kind.

(d) All of the right, title and interest of the

Owner in the Lease and all of the rents, tolls, issues, profits, products, revenues and other income and proceeds of any nature of or from the property subjected or required to be subjected to the lien of this Indenture and all the estate, right, title and interest of every nature whatsoever of the Owner in and to the same and every part thereof.

(e) All amounts of indemnity payable by the Lessee under the Lease, other than any indemnity, if any, which by the terms hereof and of the Lease shall be payable directly to the Owner for its own account.

The property described in Subsections (a), (b) and (c) is hereinafter sometimes referred to as "Equipment", and all of the property described in Subsections (a) through (e), inclusive, is together herein referred to as the "Indenture Estate".

Section 2.2 Owner grants and conveys to Secured Party, to have and to hold, all and singular, the aforesaid property, unto itself, its successors and assigns, as security for the Note and for the uses and purposes and subject to the terms and provisions set forth in this Indenture, subject, however, to the rights of the Lessee under the Lease.

Section 2.3 In order to effectuate the foregoing and to secure payment, performance and observance, for the same consideration as set forth above, the Owner has, pursuant to the Assignment of Lease, sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over unto Secured Party, and its successors and assigns, all of the right, title and interest of the Owner under, in and to (i) the Lease as from time to time supplemented or amended, and (ii) all monies and claims for monies due and to become due to the Owner, and all claims for damages in respect of any Casualty Occurrence with respect to the Equipment.

Section 2.4 It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner shall remain liable under the Lease to perform any and all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. Secured Party shall have no obligation or liability under the Lease by reason of or arising out of the assignment of the Lease, nor shall Secured Party be required or obligated in any manner to perform or fulfill any obligations of the Owner under or pursuant to the Lease except as may be herein expressly provided.

Section 2.5 The Owner does hereby constitute Secured Party the true and lawful attorney for the Owner, irrevocably, with full power (in the name of the Owner or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all

monies and claims for monies due and to become due under or arising out of the Lease, to endorse any checks or instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Secured Party may deem to be necessary or advisable in the premises. The Owner agrees that promptly upon receipt thereof, it will transfer to Secured Party any and all monies from time to time received by it constituting part of the Indenture Estate, except that the Owner shall accept and retain (i) any amounts distributed to it by Secured Party under this Indenture and (ii) any indemnification or similar payments, if any, required hereunder and under the Lease to be made directly to the Owner for the benefit of the Owner.

Section 2.6 The Owner agrees that at any time and from time to time, upon the written request of Secured Party, the Owner will promptly execute and deliver any and all such further instruments and documents as Secured Party may deem desirable in obtaining the full benefits of this Indenture, any assignment pursuant hereto and any of the rights and powers herein granted.

Section 2.7 The Owner does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the Assignment of Lease and this Indenture shall remain in effect, any of its right, title or interest thereby or hereby assigned, to anyone other than Secured Party, and that it will not, except as provided in this Indenture, enter into any agreement amending or supplementing the Lease, accept any payment from the Lessee, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder.

ARTICLE III

Loan and Notes

Section 3.1 Issue of Notes and Payment.

(a) The aggregate principal amount of Notes which may be issued and secured by this Indenture is limited to Five Hundred Forty Eight Thousand Four Hundred Forty-Four and 32/100 Dollars (\$548,444.32).

(b) The Owner will issue and deliver to Secured Party a Note (or series of Notes) in the aggregate principal amount provided for in Section 3.1 (a) hereof or such

lesser amount as may equal the total amount of loans required to be advanced by Secured Party under the provisions of the Loan Agreement. All loan advances made by Secured Party shall be and constitute required advances.

(c) The Note shall be substantially in the form set forth in Exhibit D hereto, and shall mature Twelve (12) years from the date of the loan evidenced thereby, but in no event shall any Note mature subsequent to March 15, 1990.

Section 3.2 Payments from Indenture Estate Only. All payments to be made by the Owner on account of the Note or under this Indenture shall be made only from the Indenture Estate and only to the extent that the Owner shall have sufficient income or assets from the Indenture Estate to make such payments. Secured Party hereby agrees, for itself and its successors and assigns, by its acceptance of the Note, that it will look solely to the Indenture Estate, to the extent available, for distribution to it as herein provided, and that the Owner shall not be personally liable to Secured Party for any amounts payable on or pursuant to the Note or this Indenture or, except as provided herein, for any liability under this Indenture. Anything in this Section 3.2 to the contrary notwithstanding, nothing herein shall relieve the Owner from any liability incurred as a result of its own misrepresentation, breach of warranty, bad faith or gross negligence.

Section 3.3 Direct Payment. Except as otherwise provided herein, a Note need not be presented in order to receive any payment due or prepayment required thereon, so long as the Note is owned by Secured Party. Notwithstanding any provision to the contrary herein or in the Note with respect to the place of payment, each payment and prepayment due to Secured Party shall be made by a federal funds bank wire transfer at the address specified in the Note or in accordance with any unrevoked written direction from Secured Party to the Owner. The principal amount of the Note shall be recorded on Secured Party's internal data control systems and each payment of principal with respect to the Note or any portion thereof, when received, shall be evidenced by entries made by Secured Party in Secured Party's internal data control systems, showing the date and amount of the Note and/or each payment of principal with respect thereto. The aggregate unpaid amount of the Note set forth on the most recent data control systems print-out of Secured Party shall be rebuttably presumptive evidence of the sum owing and unpaid on such Note. The Owner shall be fully protected against and shall have no liability under any claim by a holder of any Note of wrongful payment or prepayment or nonpayment if such payments

or prepayments have been directed to Secured Party as above provided unless and until (i) such Note is transferred and (ii) the Owner has been notified thereof in writing.

Section 3.4 Covenant to Pay. The Owner agrees, subject to the provisions of Section 3.2 hereof, to punctually pay or cause to be paid to Secured Party any and all principal and interest (and premium, if any) to become due in respect of the Note in accordance with the terms thereof and hereof.

ARTICLE IV

Receipt, Distribution and Application of Income

From the Indenture Estate

Section 4.1 Application of Rent Payments Received From Lessee. As more particularly provided in the Assignment of Lease, Secured Party agrees to accept for the account of the Owner any payments made by the Lessee pursuant to the Lease which are made to Secured Party pursuant to the Indenture and the Assignment of Lease. As more particularly provided in the Assignment of Lease, to the extent received, Secured Party will apply such payment to satisfy the obligations of the Owner then due and payable under the Note and this Indenture, and, so long and only so long as there is no Default or Event of Default existing and continuing hereunder, any balance (if there be one) shall be paid forthwith to and retained by the Owner.

Section 4.2 Payment of Taxes. All payments to be made by the Owner hereunder will be free of expenses to Secured Party for collection or other charges and will be free of expense to Secured Party with respect to the amount of any local, state, federal or foreign taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipt taxes arising out of receipts from use or operation of the Equipment and other taxes, fees, and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter collectively called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Indenture or the Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or of the Lease or the Purchase Order, all of which Impositions the Owner assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Owner will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation

thereof or upon the earnings arising therefrom or upon Secured Party solely by reason of its Security Interest therein, and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the Security Interest of Secured Party or result in a lien upon any such Item of Equipment; provided, however, that the Owner shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings, or causing such contest of, such Impositions and the nonpayment thereof does not, in the advance written opinion of Secured Party, adversely affect the Security Interest of Secured Party hereunder. If any Impositions shall have been charged or levied against Secured Party directly and paid by Secured Party, the Owner shall reimburse Secured Party upon presentation of an invoice therefor; provided, however, that the Secured Party shall submit notice in writing to the Lessee at least Ten (10) business days in advance of payment of such Impositions.

In the event any reports with respect to Impositions are required to be made, the Owner will either make such reports in such manner as to show the interests of the Lessee, the Lessor and Secured Party in the Equipment or notify Secured Party of such requirement and make such reports in such manner as shall be satisfactory to Secured Party.

ARTICLE V

Provisions Regarding Security

Section 5.1 Assignment. As further security for the performance by the Owner of its obligations hereunder and under the Note, the Owner will contemporaneously with the execution of this Indenture by the Owner and Secured Party (i) deliver to Secured Party the original of the Lease, (ii) deliver to Secured Party an executed copy of the Assignment of Lease, (iii) deliver to Secured Party an executed copy of the Consent to Assignment and (iv) promptly cause this Indenture, the Lease and the Assignment to be duly filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited in conformity with the Interstate Commerce Act and in such other places within or without the United States as Secured Party may reasonably request for the protection of its Security Interest and will furnish to Secured Party proof thereof. The Owner will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Secured Party, for the purpose of protecting Secured Party's Security Interest in the Equipment to the satisfaction of Secured Party and its counsel or for the purpose of carrying

out the intention of this Indenture, and in connection with any such action, will deliver to Secured Party proof of such filings and an Opinion of Counsel that such action has been properly taken. The Owner will pay all costs, charges and expenses incident to its compliance with the foregoing provisions of this Section 5.1.

Section 5.2 Compliance With Laws, Regulations, Etc. The Owner will comply, and cause the Lessee of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws, regulations, requirements and rules of the jurisdiction in which operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws, regulations, requirements and rules affect the title, maintenance, operation or use of the Equipment; and in the event that such laws, regulations, requirements or rules require any alteration, replacement or addition of or to the Equipment or any part thereof or thereon, the Owner will conform therewith at its own expense and will maintain the same in proper condition for operation, under such laws, regulations, requirements and rules, provided, however, that the Owner may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not, in the sole opinion of Secured Party, adversely affect the property, the value of the property or the rights of Secured Party under this Indenture.

Section 5.3 Use and Maintenance of Equipment. The Owner shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Owner shall not modify, or allow modification of, the Equipment without the written authority and approval of Secured Party, which consent shall not be unreasonably withheld, provided that no such approval shall be necessary if, and to the extent such modification is required by Section 5.2 hereof. Any parts installed or replacements made by the Owner or the Lessee upon the Equipment shall be considered accessions to the Equipment and title thereto shall be immediately vested in the Lessor (without cost or expense to the Owner, in the case of any part installed or replaced by the Lessee), subject to the Security Interest of Secured Party.

Section 5.4 Liens on the Equipment. The Owner shall pay or satisfy and discharge any and all sums claimed by any Person against, through or under it or the Lessee or its or the Lessee's

successors or assigns which, if unpaid, might result in a lien, charge or security interest upon or with respect to the Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon the Equipment as a result of the failure of the Owner to perform or observe any of its covenants or agreements under this Indenture; but the Owner shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest, or cause the contest of, the validity thereof in any reasonable manner which will not, in the written opinion of Secured Party, affect or endanger the Security Interest of Secured Party in the Equipment.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

Section 5.5 Insurance. The Owner will at all times after delivery and acceptance of the Equipment, at its own expense, procure and maintain or cause to be procured and maintained insurance for each Equipment written by a sound and reputable insurance company or companies satisfactory to Secured Party for all risk, physical loss and damage and public liability in amounts satisfactory to Secured Party, but in any event equal at all times to the Casualty Value thereof; subject, however, to any permissible deductibles under the Lease. Such insurance may provide that losses shall be adjusted with the Lessee and shall provide that the proceeds thereof shall be subject to a lender's loss payable endorsement in favor of Secured Party and shall be payable to the Owner and Secured Party as their interests may appear. All proceeds of the insurance received by the Owner or Secured Party with respect to the Equipment under circumstances not constituting a Casualty Occurrence (as hereinafter defined) shall be paid to the Owner upon proof satisfactory to Secured Party that any damage to any Equipment with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by Secured Party with respect to a Casualty Occurrence shall be credited toward the payment required by Section 5.7 with respect to such Casualty Occurrence.

Section 5.6 Duty of Owner to Notify Secured Party. In the event that the Equipment shall (a) be or become worn out, lost, stolen, destroyed or irreparably damaged during the term of the Lease, including any renewal term thereunder, or thereafter while

the Equipment is in the possession of the Lessee pursuant to Section 13 or 17 of the Lease, or (b) be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of the Lease, including any renewal term thereunder (any such occurrence under (a) or (b) above, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of the Lease, being hereinafter called a "Casualty Occurrence"), the Owner shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform Secured Party in regard thereto and shall pay the Casualty Prepayment Amount (computed in accordance with the provisions of Section 5.8) for such Unit as a prepayment on the Notes in accordance with the terms hereof.

Section 5.7 Payment for Casualty Occurrence. The Owner, within Thirty (30) days following receipt of a notice of a Casualty Occurrence, shall pay to Secured Party the entire outstanding principal balance of the Note together with all interest then due and owing, and any other sums due Secured Party under the Note or the Loan Agreement, and a sum equal to the Casualty Prepayment Amount of such Equipment as of the date of such payment.

Section 5.8 Assignment of Insurance. In the event the Lease requires the Lessee to insure the Equipment and name the Owner as an insured, the Owner does hereby assign and by separate instrument will assign to Secured Party its rights to the proceeds of any such insurance and direct the Lessee and its insurer to deliver to Secured Party the proceeds otherwise payable to the Owner. The proceeds so delivered shall be treated by the Owner and Secured Party as payments made on account of Casualty Prepayment Amounts as herein provided for.

Section 5.9 Release, Substitution and Replacement. So long, but only so long, as no Event of Default has occurred and is continuing hereunder, and after the receipt by Secured Party of the Casualty Prepayment Amount, Secured Party shall execute a release in respect of the Equipment.

Section 5.10 Further Assurances.

(a) The Owner, will, at any time and from time to time, properly upon the reasonable request of Secured Party execute in favor of Secured Party and deliver to Secured Party a supplemental indenture or mortgage or security agreement on any of the Equipment and an assignment of lease for any lease of the Equipment in form and substance requested by Secured Party and cause the same to be duly filed with the Interstate Commerce Commission. Unless prohibited by law, Secured Party is hereby constituted the attorney-in-fact of the Owner and is hereby authorized to take such action or execute, for and in the name of the Owner, any and all documents necessary to give effect to the terms of this Indenture.

(b) Whenever, under applicable law, it is necessary or desirable that any chattel mortgage or security agreement be otherwise filed, recorded, refiled, or rerecorded to create or to continue to effect the lien thereof, the Owner will cause such chattel mortgage or security agreement to be filed, recorded, refiled or rerecorded and will furnish to Secured Party evidence of each such filing, recording, refiling or rerecording and an Opinion of Counsel covering such filing, recording, refiling or rerecording.

Section 5.11 Duty to Number and Mark Equipment. The Owner will cause the Equipment to be kept numbered with the Lessee's road number as set forth in Annex A to the Lease, or in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement thereto extending the Lease to cover such Equipment, and will cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of the Equipment in letters not less than one inch in height the words set forth in Item 5 of Exhibit A hereto, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect (i) the title of the Lessor to such Item of Equipment, (ii) the Lessor's rights under the Lease and (iii) Secured Party's rights hereunder. The Owner will not allow the Lessee to place the Equipment in operation or to exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will cause any such name or names and word or words which may be removed, defaced

or destroyed to be promptly replaced. The Owner will not change, or consent to the changing of, the road number of the Equipment except with the consent of Secured Party and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with Secured Party by the Owner and filed, recorded, or deposited in all public offices where this Indenture and the Lease shall have been filed, recorded or deposited.

Section 5.12 Prohibition Against Certain Designations. Except as above provided, the Owner will not allow the name of any Person to be placed on the Equipment as a designation that might be interpreted as a claim of ownership or Security Interest; provided, however, that, in accordance with the terms of the Lease, the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under the Lease.

ARTICLE VI

Satisfaction and Discharge

Section 6.1 Payment of Indebtedness - Satisfaction. This Indenture and the rights and interests hereby or in any instrument executed and delivered pursuant hereto created and granted shall cease to be of further effect and become null and void when the Owner:

(i) has paid the entire indebtedness on all Notes outstanding hereunder; and

(ii) has paid or caused to be paid all sums payable hereunder by the Owner.

Section 6.2 Evidence of Satisfaction. Secured Party shall, if so requested to do by the Owner, execute and deliver such documents as may be necessary to acknowledge satisfaction and discharge of this Indenture and to release the lien hereof and that of the Assignment or Assignments of Lease, upon the satisfaction hereof and of the Notes pursuant to Section 6.1 hereof.

ARTICLE VII

Defaults - Remedies

Section 7.1 Events of Default. The term "Event of Default"

for the purposes hereof shall mean any one or more of the following:

(a) The Owner shall fail to make any payment of interest, principal or premium on any Note and such failure shall continue for ten (10) days;

(b) The Owner shall fail to make any other payment required hereby and such failure shall continue for fifteen (15) days;

(c) The Owner shall fail or refuse to comply with any other covenant, condition, agreement, term or provision of this Indenture on its part to be kept or performed or to make a provision satisfactory to Secured Party for such compliance for more than thirty (30) days after such failure shall first become known to any Responsible Officer of the Owner;

(d) Any representation of warranty made by the Owner in this Indenture, the Loan Agreement or any statement or certificate furnished pursuant to any term of this Indenture, the Loan Agreement or in any document or instrument relating to the making of any loan or loans evidenced by the Notes, shall prove to be untrue in any material respect as of the date made or given;

(e) The Owner shall file or have filed against it a petition under any bankruptcy, reorganization, arrangement insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall remain undischarged for a period of sixty (60) days, or a receiver, liquidator or trustee shall be appointed for the Owner or any of its property or the Owner shall make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due;

(f) The Owner shall make or suffer any unauthorized assignment or transfer of the Indenture Estate, or any interest therein; or

(g) An Event of Default shall have occurred and be continuing under the Lease.

Section 7.2 Remedies. When any Event of Default has happened and is continuing, Secured Party may exercise in any order any one or more or all of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; and each and every

remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) Secured Party may, upon written notice to the Owner, and upon compliance with any legal requirements then in force and applicable to such action by Secured Party, declare the entire indebtedness in respect of the Notes, together with interest thereon then accrued and unpaid, and, to the extent permitted by law, a premium in the amount which would have been payable if the Owner had then elected to prepay the Notes at the premium provided in Section 2.5 of the Loan Agreement, immediately due and payable, without further demand, and thereafter the aggregate of such indebtedness, interest and premium (the aggregate of which is hereinafter sometimes called the "Default Indebtedness") shall bear interest from the date of such declaration at the lower of (a) the rate of 12% per annum or (b) the highest rate allowed by applicable law, and Secured Party shall subject to the provisions and limitations of Section 3.2 hereof, thereupon be entitled to recover judgment for the entire unpaid balance of Default Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Indenture Estate.

(b) Subject always to the then existing rights, if any, of the Lessee under the Lease, Secured Party may (subject to compliance with any applicable mandatory legal requirements) take immediate possession of the Indenture Estate, or any portion thereof, and for that purpose may pursue the same wherever it may be found.

(c) Subject always to the then existing rights, if any, of the Lessee under the Lease, Secured Party may (if at any time such action may be lawful and always subject to compliance with any mandatory legal requirements) either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered or certified mail to the Owner at least ten (10) days prior to the date of such sale (and any other notice which may be required by law), sell and dispose of the Indenture Estate, or any part thereof, at public auction or private sale to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as Secured Party may determine, and at any place (whether or not it be the location of the Indenture Estate or any part thereof) designated in the notice referred to above. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales,

or for any such adjourned sale or sales, without further published notice. Secured Party may bid and become purchaser at any sale.

(d) Secured Party may proceed to protect and enforce this Indenture and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Indenture Estate or any part thereof, or for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper legal or equitable remedy available under applicable law.

(e) Secured Party may proceed to exercise, in respect of the Lease and the Equipment covered thereby and the duties, obligations and liabilities of the Lessee thereunder, all rights, privileges and remedies in the Lease, or by applicable law permitted or provided to be exercised by the Owner, and may exercise all such rights and remedies either in its own name or in the name of the Owner for Secured Party's use and benefit. Without limiting any of the other terms of this Indenture or of the Assignment of Lease, it is acknowledged and agreed by the Owner that the Assignment of Lease shall be deemed to give and assign to and vest in Secured Party all the rights and powers in this Section VII provided for.

Section 7.3 Application of Funds on Default. The purchase money proceeds and avails of any sale of the Indenture Estate or any part thereof, and the proceeds and avails of any other remedy hereunder, or other realization of the security hereby given, including the proceeds of any sale pursuant to Section 7.2 hereof, shall be applied:

(a) First, to the payment of the cost and expenses of the sale, proceeding or other realization, including all costs and expenses and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such Indenture Estate or any part thereof, the reasonable fees and expenses of Secured Party, attorneys and agents of Secured Party in connection therewith and to the payment of all taxes, assessments or similar liens on all of any part of the Indenture Estate which may at that time be superior to the lien of this Indenture (unless such sale or other realization is subject to any such superior lien);

(b) Second, to the payment of all advances made by Secured Party hereunder, which were used for the purpose of

preserving the Indenture Estate;

(c) Third, to the payment of the whole amount remaining unpaid hereunder, under the Loan Agreement, or on or pursuant to the Note; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Note, then first, to the unpaid principal thereof, second, to unpaid interest thereon, and third, to any other amount due hereunder, under the Loan Agreement, or on or pursuant to the Note.

(d) Fourth, to the payment of the surplus, if any, to the Owner, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

If there be a deficiency, the Owner shall, subject always to the provisions of Section 3.2 hereof, remain liable therefor and shall forthwith pay the amount of any such deficiency to Secured Party.

Section 7.4 Effect of Sale, Etc. Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Owner of all right, title, interest, claim and demand whatsoever, either at law or in equity, of, in and to the Indenture Estate, or any part thereof, so sold, and any property so sold shall be free and clear of any and all rights of redemption by, through or under the Owner. The Owner covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension of law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation of appraisement of the Indenture Estate or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof; and every person acquiring any interest in or title to the Indenture Estate or any part thereof subsequent to the date of this Indenture hereby expresses waiver, to the extent permitted by applicable law, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Secured Party, but will suffer and permit the execution of every such power as though no such right, power, law or laws had been made, given or enacted.

The receipt of the proceeds by Secured Party, or by any person authorized under any judicial proceedings to make any such sale, shall be a sufficient discharge to any purchaser of the Indenture Estate, or of any part thereof, sold as aforesaid; and no such purchaser shall be bound to see the application of such purchase money, or be bound to inquire as to the authorization, necessity or propriety of any such sale. In the event that Secured Party is the successful purchaser at any such sale, it shall be entitled, for the purpose of making settlement or payment, to use and apply the balance outstanding on its Notes as a credit against the purchase price.

Section 7.5 Delay or Omission; Not Waiver. No delay or omission of Secured Party to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or acquiescence therein. Every right and remedy given by this article or by law to Secured Party may be exercised from time to time as often as may be deemed expedient by Secured Party.

Section 7.6 Restoration of Rights and Remedies. If Secured Party shall have instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Secured Party, then and in every such case the Owner and Secured Party shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of Secured Party shall continue as though no such proceeding has been instituted.

ARTICLE VIII

Warranties of Owner

Section 8.1 Corporate Organization and Authority. The Owner is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction or incorporation, has all requisite power and authority and all necessary licenses and permits to own the Indenture Estate.

Section 8.2 Sale of Note and Ownership and Lease of Equipment; Legal and Authorized. The sale of the Note pursuant to the Loan Agreement, the execution and delivery of this Indenture and the Note, the purchase and lease of the Equipment and the execution and delivery of each and every other document or instrument executed and delivered by the Owner in connection with this Indenture or the sale of the Note has been duly authorized by all

necessary action on the part of the Owner. This Indenture, the Lease and each and every other document or instrument executed and delivered by the Owner in connection with the sale of the Note has been duly executed and delivered by the Owner and each is, and when the Note is executed and delivered by the Owner, it will be, the valid and binding obligation of the Owner, legally enforceable in accordance with its terms except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

Section 8.3 Sale of Note and Ownership and Lease of Equipment; No Conflicts. The sale of the Note by the Owner and the compliance by the Owner with all of the provisions of this Indenture, the Lease, the Assignment of Lease and the Note are within the powers of the Owner and are legal and will not conflict with, result in any breach in any of the provisions of, constitute a default under, or result in the creation of any lien upon the Indenture Estate or any part thereof under the provisions of the Charter or by-laws of the Owner or any other agreement or instruments to which the Owner is a party or by which it may be bound.

Section 8.4 Governmental Consent. Neither the nature of the Owner, the Lessee, or any other party to this transaction, nor any relationship between the Owner, the Lessee or any other party to this transaction, nor any circumstance in connection with the offer, issue, sale or delivery of the Note, this Indenture, or any other document or instrument executed and delivered by the Owner Trustee in connection with the sale of the Note is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority on the part of the Owner as a condition to the execution and delivery of the Note, the Indenture, or any other document or instrument executed and delivered by the Owner in connection with the sale of the Note or as a condition to the offer, issue, sale or delivery of the Note except for any consents approvals or authorizations, if any, which have been obtained and are in full force and effect.

Section 8.5 Warranty of Title. The Owner will, at the date of the subjection of all or any part of the Indenture Estate to the Security Interest hereof, own and be possessed of the Indenture Estate, or such part thereof, free and clear of all mortgages, pledges, liens, charges or encumbrances other than the Lease, the lien hereof and such liens or encumbrances as are specifically permitted by this Indenture; and the Owner will at such date have full power and lawful authority to assign, transfer, deliver and pledge or cause to be assigned, transferred, delivered and pledged, the entire Indenture Estate, or such part thereof, in the manner and form aforesaid.

ARTICLE IX

Miscellaneous

Section 9.1 Appointment of Collateral Trustee. If at any time Secured Party should deem it advisable or desirable to assign or otherwise convey its interest hereunder to a collateral trustee, in trust for the benefit of the holders, from time to time, of the Notes (whether or not including Secured Party), the Owner agrees to execute any and all documents and instruments as may be necessary to accomplish such purpose including, but not limited to, a collateral trust indenture meeting the requirements of the Trust Indenture Act of 1939, as may from time to time be amended.

Section 9.2 Counterparts. This Indenture may be executed in any number of counterparts, each of which if bearing the signature of all parties shall be deemed an original or any two or more of which containing in the aggregate the signatures of all parties shall together constitute but one and the same instrument which shall be deemed an original.

Section 9.3 Governing Law. The provisions of this Indenture and all rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

Section 9.4 Titles and Section Headings. The titles of the Articles and the Section Headings herein are for convenience only and shall not affect the construction hereof.

Section 9.5 Benefits of Indenture. This Indenture shall be for the sole and exclusive benefit of the Owner, Secured Party and any other holder of the Notes hereby secured, and all covenants, agreements and rights shall inure to the benefit of or bind, as the case may be, such parties, their respective successors and assigns.

Section 9.6 Severability. In case any one or more of the provisions contained in this Indenture or in the Notes shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 9.7 Execution. Although for convenience this Indenture is dated as of the date first above written, the actual

date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Indenture to be duly executed by their respective corporate officers thereunder duly authorized and their respective corporate seals to be hereunto affixed and attested all as of the day, month and year first above written.

ATTEST:

GREAT AMERICAN LIFE INSURANCE
COMPANY, Owner



(Corporate Seal)

BY:



ATTEST:

GREAT AMERICAN INSURANCE COMPANY,
Secured Party



(Corporate Seal)

BY:

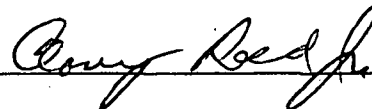


EXHIBIT A

ITEM 1

<u>Type</u>	<u>Builder and Location</u>	<u>Quantity</u>	<u>Lessee's Road Number</u>	<u>Estimated Time of Delivery</u>
Plasser Ballast Undercutter Model RM76U	Plasser American Corporation 2001 Myers Road P.O. Box 5464 Chesapeake, Virginia 23324	1	CNW X 2001	August, 1978

including all spare parts and other equipment provided in connection with the above-described Ballast Undercutter.

ITEM 2

Description of Lessee

Chicago and Northwestern
Transportation Company,
a Delaware Corporation
400 West Madison Street
Chicago, Illinois 60606

EXHIBIT D

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND NO TRANSFER HEREOF MAY BE EFFECTED UNLESS THE TRANSACTION RELATING THERETO SHALL BE EXEMPT WITHIN THE MEANING OF SUCH ACT AND THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION ADOPTED HEREUNDER.

PROMISSORY NOTE
(Without Recourse)

\$548,444.32

Cincinnati, Ohio
September 1, 1978

FOR VALUE RECEIVED, the undersigned, GREAT AMERICAN LIFE INSURANCE COMPANY, a New Jersey corporation, (the "Maker") hereby promises to pay to the order of GREAT AMERICAN INSURANCE COMPANY, an Ohio corporation, (the "Payee") at its offices at 580 Walnut Street, Cincinnati, Ohio, the principal sum of Five Hundred Forty-Eight Thousand Four Hundred Forty-Four and 32/100 Dollars (\$548,444.32) with interest on the unpaid balance thereof from the date hereof, at the rate of Ten and One-Quarter Percent (10-1/4%) per annum (computed on the basis of a 360-day year of twelve 30-day months).

Interest and principal on this Note shall be due and payable in One (1) installment of interest only due on September 15, 1978 and in Twenty-three (23) consecutive semi-annual payments each in the amount of Forty-One Thousand One Hundred Forty and 32/100 Dollars (\$41,140.32) to be due and payable on March 15 and September 15 of each year commencing on March 15, 1979. Principal on this Note shall be due and payable in full on March 15, 1990. Upon termination of the Lease for certain railroad equipment dated August 1, 1978, Payee as lessor and Chicago and North Western Transportation Company as lessee (which Lease has been assigned to Payee as security for this Note and is hereinafter referred to as the "Lease"), then the entire principal amount hereof, together with interest accrued and unpaid thereon, shall become immediately due and payable.

Principal and interest on this Note shall be payable at the Payee's account at The Provident Bank, Account No. 0431-627 in immediately available funds or at such other place as the Payee shall have designated to the Maker in writing. Payments of interest shall be made to the holder of this Note without presentation of this Note for notation of such payments.

This Note shall not be subject to prepayment, in whole or in part at any time except as contemplated following an Event of Loss, Event of Default, or Termination (as defined in the Lease) under the Lease or the Indenture (as hereinafter defined). In the event of partial prepayment hereunder, such prepayment shall be applied to the principal only. This Note shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) on any overdue installments of principal or interest (to the extent permitted by applicable law) from the due date thereof at the rate of Twelve Percent (12%) per annum on such overdue installment.

This Note is secured by (i) an Agreement and Indenture of even date herewith between the Payee as secured party and the Maker as debtor (the "Indenture") and (ii) an Assignment of Lease of even date herewith between the Maker and the Payee (the "Assignment of Lease").

Reference is hereby made to the Indenture and Assignment of Lease for a statement of the rights and obligations of the Payee and Maker, to all of which terms and conditions in the Indenture and Assignment of Lease each holder of this Note agrees by its acceptance of this Note.

Any of the following events shall constitute an Event of Default hereunder:

(1) The Maker shall fail to make payment of any part of the principal of or interest on this Note within Ten (10) days of the applicable due date; or

(2) An Event of Default under and as defined in the Indenture shall have occurred; or

(3) An Event of Default under and as defined in the Lease shall have occurred; or

(4) The Maker shall cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or an insolvent, file a petition seeking for itself any reorganization, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or file an answer admitting the material allegations of a petition filed against it in any such proceeding, or consent to or acquiesce

in the appointment of a trustee, receiver or liquidator of it or all or any substantial part of its assets or properties, or take any action looking to its dissolution or liquidation.

If any Event of Default shall have occurred and be continuing, then and in every such case the Payee may, at any time, by written notice or notices to the Maker, declare the entire unpaid principal amount of this Note, together with the accrued and unpaid interest thereon, immediately due and payable without presentment, demand, protest or notice, all of which are hereby waived.

The Maker hereof waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note.

This Note shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio.

The provisions of this Note shall inure to the benefit of and be binding upon any successor to the Maker hereof and shall extend to any holder hereof.

GREAT AMERICAN LIFE INSURANCE
COMPANY

BY: _